

Internal Revenue Service

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Date [REDACTED]

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Department of the Treasury

Washington, DC 20224

Contact Person: [REDACTED]

Telephone Number: [REDACTED]

In Reference to: [REDACTED]

Date: [REDACTED]

Employer Identification Number: [REDACTED]
Key District: [REDACTED]

Dear Taxpayer:

This is in response to your Form 1024, Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code.

You were incorporated [REDACTED] under the Nonprofit Public Benefit Law to develop and operate cooperative housing. You are a membership organization and will provide housing for your members on a cooperative basis. As a cooperative, your members control you and are the beneficiaries of your operations. You state in your application that you provide housing for low and moderate income persons. Your Articles of Incorporation and by-laws state that your purpose is to provide housing and related facilities for the benefit of your members.

You are a limited equity cooperative and you provide housing to your members on a cooperative basis. However, a limited equity cooperative may only distribute accumulated interest on membership interest up to 10 percent per year. The file shows that the current approximate share value for a one bedroom unit is [REDACTED], for a two-bedroom unit is [REDACTED], and for a three-bedroom unit is [REDACTED]. You have stated that each member's share value appreciates at a rate set by the Board and tied to the prime rate used by [REDACTED] Bank. Past rates have ranged from 6% to 10% annually.

Sections 501(a) and 501(c)(4) provide for the exemption from federal income tax of organizations not organized for profit but operated exclusively for the promotion of social welfare provided

[REDACTED]

the net earnings of the organization do not inure to the benefit of any private individual.

Section 1.501(c)(4)-1(a)(1) of the Income Tax Regulations provides that a civic organization may be exempt under section 501(c)(4) if (1) it is not organized and operated for profit, and (2) it is operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2) of the regulations provides that an organizations is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting the common good and general welfare of the people of the community.

Garden Homes Co. v. Commissioner, 64 F. 2d 593 (7th Cir. 1933), held that a corporation which provided housing to all working men is operated exclusively for social welfare, regardless of the fact that the residents held the common stock of the corporation.

Commissioner v. Lake Forest, Inc., 305 F.2d 814 (4th Cir. 1962), holds that an organization that provided housing on a cooperative basis was operated as a private self-help organization which provided only an incidental benefit to the community as a whole. Accordingly, it was held not that it was not described in section 501(c)(4) of the Code.

Lake Petersburg Association v. Commissioner, T.C.M. 1974-55, held that a corporation that operated for the benefit of its members who control its operations does not promote social welfare. The Court distinguished this case from Garden Homes Co., supra, in which a housing project was conceived, initiated, controlled and largely financed by the city and county governments of Milwaukee.

Rev. Rul. 55-439, 1955-2 C.B. 257, holds that an organization promotes social welfare because it is engaged in assisting low-income persons with the construction of homes in an area where no adequate housing exists.

Rev. Rul. 65-201, 1965-2 C.B. 170, citing Commissioner v. Lake Forest, Inc., supra, holds, in part, that an organizations that provides housing and maintenance services on a cooperative basis is not a "like organization" under section 501(c)(12) nor does it qualify for exemption under any other section of the Code.

Rev. Rul. 69-280, 1969-1 C.B. 152, holds that an organization formed to provide maintenance of exterior walls and roofs is not described in section 501(c)(4) of the Code. Citing Commissioner v. Lake Forest, Inc., the ruling concludes that the organization performs services that the members would have to provide for themselves. Accordingly, it operates for the private benefit of the members.

Rev. Rul. 73-306, 1973-2 C.B. 170, holds that an organization formed to represent the member-tenants in negotiations with management to secure better services and reasonable rents is not described in section 501(c)(4) of the Code. Citing the Lake Forest decision, the ruling concludes that the organization operates for the private benefit of its members and thus is not operated for the general welfare of the community.

Rev. Rul. 73-349, 1973-2 C.B. 179, holds that a grocery buying cooperative is not described in section 501(c)(4) of the Code because it is operated for the private benefit of its members. Similar to the Lake Forest situation, the cooperative operates for the economic benefit of its members.

Rev. Rul. 78-132, 1978-1 C.B. 157, holds that an organization operated to provide a cooperative personal service exchange is a private enterprise for the economic benefit of its members. Citing Lake Forest, the ruling concludes that the organization is operated for the members' private benefit and is not described in section 501(c)(4) of the Code.

Rev. Rul. 80-206, 1980-2 C.B. 185, holds that an organization formed to promote the legal rights of all tenants in the community is described in section 501(c)(4) of the Code. To carry out its purposes, the organization publishes a newsletter; conducts public meetings; operates an information center concerning legal rights and duties of tenants; and it occasionally litigates issues of concern to all tenants in the county. Because the organization represents the interests of all tenants in the community, it is distinguishable from the organization described in Rev. Rul. 73-306, supra.

To qualify for recognition of exemption under section 501(c)(4) an organization must satisfy two requirements. First, it must not be organized and operated for profit, and second it must be operated exclusively for the promotion of social welfare. Since you are organized under Nonprofit Public Benefit Corporation Law, you satisfy the organizational requirement. Furthermore, you operate on a cooperative basis so that the

charges to your members cover the cost of operation. Thus, you operate on a nonprofit basis as well.

The only issue is whether you are operated exclusively for the promotion of social welfare. As demonstrated in Rev. Rul. 55-439, supra, the provision of decent housing for low-income persons may promote social welfare. However, the mere provision of housing would not be considered to promote social welfare if that housing does not benefit the community. You have not demonstrated that your activities serve a particular social welfare need and you provide other than the ordinary operation of an apartment complex.

Even if you were able to demonstrate that you promote social welfare in a manner similar to Rev. Rul. 55-439, supra, you still will not qualify for exemption because you are a cooperative that operates for the private benefit of your members. Although housing may contribute to the promotion of social welfare, it does not overshadow the private benefits provided to your members. Commissioner v. Lake Forest, Inc., supra, and its progeny, including several revenue rulings, point out that cooperative self-help or mutual benefit organizations that provide housing or share personal services are not exempt under section 501(c)(4) because such organizations are operated for the private benefit of their members. An organization that operates for a private benefit does not operate for a community benefit.

Notwithstanding the weight of these cited authorities, sometimes organizations that operate to provide their members with benefits have been recognized as exempt under sections 501(c)(4) of the Code. However, there is a fundamental difference in the purpose and operation of organizations that are recognized as exempt. For example, Rev. Rul. 80-206, supra, present situations similar to the one discussed in Rev. Rul. 73-306, in which tenants formed an organization to benefit themselves. The qualitative differences in these revenue rulings are demonstrated by the following distinctions: First, whether benefits are limited to a particular membership or whether the benefits are open to all similarly situated persons in the community. Second, whether the benefits are of a type where the members provide themselves with an economic benefit or convenience through the operation of the organization. Thus, when the organization provides an economic benefit or convenience to a closed class of members, it is not exempt.

Qualification for exemption of any residents' organization must be based on whether its benefits are open to the community. First, you have not demonstrated that you serve an open class of

[REDACTED]
beneficiaries. [REDACTED]

[REDACTED] The fact that new residents may become members in the future does not open the class to the community. Indeed, the cooperatives denied exemption in the revenue rulings and cases anticipated an influx of new members. The mere fact that you limit the equity that your members may have in the project does not change the fact that you operate for their benefit.

You have relied on Garden Homes Co. v. Commissioner, supra, which holds that an organization that provides housing for working men in need of housing promotes social welfare. The Court did not address the fact that the organization's shares of common stock were held by residents. This suggests that such cooperatively owned housing may promote social welfare. However, this is not the case, because the housing project was conceived, initiated, controlled, and largely financed by local government. It is not a cooperative controlled by its members. Thus, the Garden Homes case does not present facts that you can rely on.

Because you are an organization formed and operated by your members to provide themselves with the economic benefit of cooperative housing, we conclude that you are operated for their private benefit. Because you do not benefit the community and because you operate for the benefit of your members, we conclude that you are not operated exclusively for promotion social welfare described in section 501(c)(4) of the Code and are not exempt under section 501(a). You are required to file federal income tax returns on Form 1120.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days from today and must be signed by one of your principal officers. When sending a protest or other correspondence with respect to this case, you will expedite its receipt by placing the following symbols on the envelope:

[REDACTED] These symbols do not refer to your case, but rather to its location.

You also have the right to a conference in this office after your protest statement is submitted. If you desire a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, that person must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to the District

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[REDACTED]

Director for your key district. Thereafter, any questions about your federal income tax status should be addressed to your District Director. The appropriate State Officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely,

[REDACTED]

[REDACTED]

[REDACTED]

cc: [REDACTED]